



STATE OF NEW YORK

**UNEMPLOYMENT INSURANCE APPEAL BOARD**

PO Box 15126

Albany NY 12212-5126

**DECISION OF THE BOARD**

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Mailed and Filed: OCTOBER 06, 2022

IN THE MATTER OF:

Appeal Board No. 623962

PRESENT: MARILYN P. O'MARA, MEMBER

In Appeal Board Nos. 623951, 623952 and 623953, an appeal by the claimant was processed from the decisions of the Administrative Law Judge filed May 18, 2022, which sustained as modified the initial determinations holding the claimant ineligible to receive benefits, effective March 30, 2020 through October 17, 2021, on the basis that the claimant was not totally unemployed and/or had earnings that exceeded the statutory limitation; charging the claimant with an overpayment of \$1,476.00 in benefits recoverable pursuant to Labor Law § 597 (4), \$25,926.18 in Pandemic Unemployment Assistance (PUA)

benefits recoverable pursuant to Section 2102 (h) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020 and 20 CFR Section 625.14 (a), \$12,900.00 in Federal Pandemic Unemployment Compensation (FPUC) repayable

pursuant to § 2104 (f) (2) of the Coronavirus Aid, Relief, and Economic

Security (CARES) Act of 2020, and Lost Wages Assistance benefits of \$300.00 recoverable pursuant to 44 CFR Sec. 206.120 (f)(5); and reducing the claimant's right to receive future benefits by 32 effective days and charging a civil penalty of \$6,020.12 on the basis that the claimant made willful misrepresentations to obtain benefits.

In Appeal Board Nos. 623954, 623955 and 623956, an appeal by the claimant was processed from the decisions of the Administrative Law Judge filed May 18, 2022, which sustained as modified the initial determinations holding the claimant ineligible to receive benefits, effective October 19, 2020 through July 25, 2021, on the basis that the claimant was not capable of work;

charging the claimant with an overpayment of \$882.00 in Pandemic Unemployment Assistance (PUA) recoverable pursuant to Section 2102 (h) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020 and 20 CFR Section 625.14 (a); and reducing the claimant's right to receive future benefits by zero effective days and charging a civil penalty of \$132.30 on the basis that the claimant made willful misrepresentations to obtain benefits.

In Appeal Board Nos. 623957, 623958 and 623959, the claimant appeals from the decisions of the Administrative Law Judge filed May 18, 2022, which sustained the initial determinations holding the claimant ineligible to receive benefits, effective December 21, 2020 through June 27, 2021, on the basis that the claimant was not available for employment; charging the claimant with an overpayment of \$252.00 in Pandemic Unemployment Assistance (PUA) recoverable pursuant to Section 2102 (h) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020 and 20 CFR Section 625.14 (a); and reducing the claimant's right to receive future benefits by zero effective days and charging a civil penalty of \$100.00 on the basis that the claimant made willful misrepresentations to obtain benefits.

In Appeal Board Nos. 623960, 623961 and 623962, the claimant appeals from the decisions of the Administrative Law Judge filed May 18, 2022, which sustained the initial determinations holding the claimant ineligible to receive benefits, effective December 21, 2020 through July 25, 2021, on the basis that the claimant was on a paid vacation period; charging the claimant with an overpayment of \$882.00 in Pandemic Unemployment Assistance (PUA) recoverable pursuant to Section 2102 (h) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020 and 20 CFR Section 625.14 (a); and reducing the claimant's right to receive future benefits by zero effective days and charging a civil penalty of \$132.30 on the basis that the claimant made willful misrepresentations to obtain benefits.

At the combined telephone conference hearing before the Administrative Law Judge, all parties were accorded a full opportunity to be heard and testimony was taken. There was an appearance on behalf of the claimant.

With respect to Appeal Board Nos. 623951, 623952, 623953, 623954, 623955 and 623956, it appears that the appeal was processed through inadvertence, as the claimant's appeal letter does not request an appeal from the Judge's decisions in these cases.

In Appeal Board Nos. 623957, 623958, 623959, 623960, 623961 and 623962, based on the record and testimony in this case, the Board makes the following

**FINDINGS OF FACT:** The claimant worked for a hospital as an endoscopy technician. The claimant also had a second job working at a resort.

The claimant's last day of work at the resort was February 20, 2020, and the resort ultimately laid him off because of the COVID-19 pandemic and told him to apply for unemployment insurance. He filed a claim online and saw information advising him that, in claiming unemployment benefits, he must be available for work and able to take a job right away.

The claimant continued working for the hospital. He took a day of personal leave on December 24, 2020, and a day of personal leave on June 24, 2021. For both of these days, the hospital paid him personal

leave pay. The claimant took a vacation day on June 25, 2021, for which the hospital paid him vacation pay. The claimant was sick on July 23, 2021, and he received sick pay for that day. The claimant was not paid any vacation or holiday pay with respect to the weeks ending December 27, 2020 and July 25, 2021.

When he certified for benefits for the weeks ending December 27, 2020 and June 27, 2021, the claimant answered questions that asked how many days he was not ready, willing and able to work that week. The claimant answered that there were no such days.

When he certified for the weeks ending December 27, 2020, June 27, 2021, and July 25, 2021, the claimant also answered questions that asked how many days of vacation or holiday pay he was owed for those weeks. The claimant answered that he was not owed vacation or holiday pay for these weeks.

The claimant received \$504.00 in PUA benefits for the week ending December 27, 2020, and \$504.00 in PUA benefits for the week ending June 27, 2021. The claimant received \$378.00 in PUA benefits for the week ending July 25, 2021.

**OPINION:** The credible evidence establishes that, when the claimant filed his claim for benefits, he was informed that he must be available for work and able to take a job right away. On December 24, 2020 and June 24, 2021, the claimant was on personal leave from his hospital job. Therefore, he was not

available for work and able to take a job right away. A claimant is ineligible for benefits on any day when he is not available for work. Accordingly, we conclude that the claimant was ineligible for benefits one day in the week ending December 27, 2020, and one day in the week ending June 27, 2021.

The credible evidence further establishes that the claimant received \$504.00 in PUA benefits for the week ending December 27, 2020, and \$504.00 in PUA benefits for the week ending June 27, 2021. Since the claimant was ineligible for one day of benefits in each of these weeks, the amounts paid to the claimant with respect to these days constitute an overpayment. Overpayments of PUA benefits are recoverable as a matter of federal law. Accordingly, we conclude that the claimant is subject to a recoverable overpayment of one day of PUA benefits for the week ending December 27, 2020, and one day of PUA benefits for the week ending June 27, 2021.

The credible evidence further establishes that, when he certified for benefits for the weeks ending December 27, 2020 and June 27, 2021, the claimant was asked how many days he was not ready, willing and able to work. With respect to both weeks, he certified that there were no such days. These certifications were false, as the claimant was on personal leave for one day in each of these weeks. Further, the claimant knew he was on leave. We are not persuaded by the claimant's testimony that he thought he was certifying only with respect to the job he had lost, and not with respect to his job at the hospital, where he was still employed. The question that the claimant answered was not limited to any particular employer. Also, the claimant does not contend that, on the days when he was on personal leave from the hospital, he was available to work for any other employer. Therefore, we find that the claimant's certifications constitute willful misrepresentations. Accordingly, we further conclude that the claimant is subject to a civil monetary penalty.

The credible evidence further establishes that the claimant took one day of vacation on June 25, 2021, and he was paid vacation pay for this day off. The claimant was not paid vacation or holiday pay with respect to any day in the weeks ending December 27, 2020 and July 25, 2021. Accordingly, we further conclude that the claimant is ineligible for benefits for one day in the week ending June 27, 2021. In addition, we further conclude that the PUA benefits paid to the claimant with respect to this day constitute an overpayment, and the overpayment of PUA benefits is recoverable pursuant to federal law. This matter is referred to the Department of Labor for recalculation of the overpayment amount.

The credible evidence further establishes that, when the claimant certified for benefits for the week ending June 27, 2021, the claimant certified that he was not owed vacation or holiday pay with respect to that week. In fact, however, the claimant received one day of vacation pay. As the claimant knew that he had taken

a vacation day, his false certification constitutes a willful misrepresentation. Accordingly, we conclude that the claimant is subject to a civil monetary penalty. This matter is referred to the Department of Labor for recalculation of the amount of the penalty.

DECISION: In Appeal Board Nos. 623951, 623952, 623953, 623954, 623955, and 623956, the appeal is dismissed. The decisions in A.L.J. Case Nos. 022-03080, 022-03224, 022-03225, 022-03226, 022-03227, and 022-03230 are continued in effect.

In Appeal Board Nos. 623957, 623958, 623959, 623960, 623961 and 623962, decisions of the Administrative Law Judge are modified as follows and, as so modified, are affirmed.

In Appeal Board Nos. 623957, 623958 and 623959, the initial determinations, holding the claimant ineligible to receive benefits, effective December 21, 2020 through June 27, 2021, on the basis that the claimant was not available for employment; charging the claimant with an overpayment of \$252.00 in Pandemic Unemployment Assistance (PUA) recoverable pursuant to Section 2102 (h) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020 and 20 CFR Section 625.14 (a); and reducing the claimant's right to receive future benefits by zero effective days and charging a civil penalty of \$100.00 on the basis that the claimant made willful misrepresentations to obtain benefits, are sustained.

In Appeal Board Nos. 623960, 623961 and 623962, the initial determinations, holding the claimant ineligible to receive benefits, effective December 21, 2020 through July 25, 2021, on the basis that the claimant was on a paid vacation period; charging the claimant with an overpayment of \$882.00 in Pandemic Unemployment Assistance (PUA) recoverable pursuant to Section 2102 (h) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020 and 20 CFR Section 625.14 (a); and reducing the claimant's right to receive future benefits by zero effective days and charging a civil penalty of \$132.30

on the basis that the claimant made willful misrepresentations to obtain benefits, are modified to hold the claimant ineligible and subject to a recoverable overpayment and civil monetary penalty with respect to one day of benefits during the week ending June 27, 2021, and, as so modified, are sustained.

In Appeal Board Nos. 623961 and 623962, this matter is referred to the Department of Labor for recalculation of the amount of the PUA overpayment and civil monetary penalty.

MARILYN P. O'MARA, MEMBER